

**RESOLUTION NO. 2013-60**

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE ACTING CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO AN AGREEMENT WITH THE SOUTH FLORIDA RACING ASSOCIATION, LLC, A FLORIDA LIMITED LIABILITY COMPANY, RELATING TO CARDROOM GAMING OPERATIONS AT THE HIALEAH RACETRACK, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1" TO AUDIT AND HAVE ACCESS TO FINANCIAL BOOKS, RECORDS AND ACCOUNTS DIRECTLY RELATED TO THE CALCULATION OF GROSS RECEIPTS FROM CARDROOM GAMING OPERATIONS.

**WHEREAS**, pursuant to Hialeah, Fla., Ordinance 08-176 (Jan. 6, 2009), the City Council approved a cardroom at Hialeah Racetrack; and

**WHEREAS**, section 849.086(13)(f), Florida Statutes, authorizes the distribution to the City of 25% of the money deposited into the Para-Mutuel Wagering Trust Fund from the cardroom tax revenue paid by the South Florida Racing Association, LLC to the State of Florida; and

**WHEREAS**, the City of Hialeah finds it in the best interest of the community and residents to enter into this Agreement to allow for periodic audits and access to financial books and records directly related to the calculation of the gross receipts of cardroom tax revenue in order to make sure that tax revenue is being properly reported and transmitted to the State of Florida.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The City of Hialeah, Florida hereby authorizes the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to enter into an agreement with the South Florida Racing Association, LLC, a Florida limited liability company, relating to cardroom gaming operations at the Hialeah Racetrack, a copy of which is attached hereto and made a part

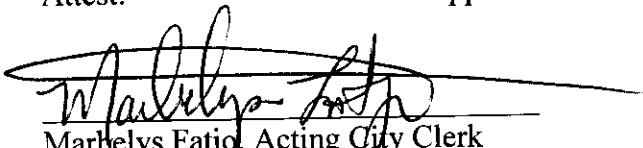
hereof as Exhibit "1", to audit and have access to financial books, records and accounts directly related to the calculations of gross receipts from cardroom gaming operations.

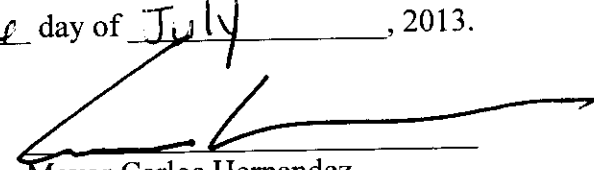
PASSED AND ADOPTED this 25 day of June, 2013.

  
Isis Garcia-Martinez  
Council President

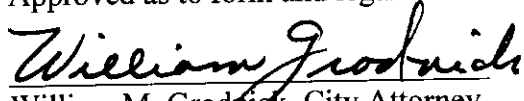
Attest:

Approved on this 16 day of July, 2013.

  
Marbelys Fatjo, Acting City Clerk

  
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

  
William M. Grodzicki, City Attorney

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Resolution was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

AGREEMENT BETWEEN CITY OF HIALEAH, FLORIDA,  
AND SOUTH FLORIDA RACING ASSOCIATION, LLC, REGARDING  
CARDROOMS AT HIALEAH RACE TRACK

THIS AGREEMENT is entered this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the CITY OF HIALEAH, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as the "City"), and SOUTH FLORIDA RACING ASSOCIATION, LLC, a Florida limited liability company (hereinafter referred to as "SFRA").

W I T N E S S E T H:

WHEREAS, SFRA holds a permit to conduct pari-mutuel wagering at Hialeah Race Track from the Division of Pari-Mutuel Wagering of the Florida Department of Business and Professional Regulations.

WHEREAS, Section 849.086, Florida Statutes, authorizes licensed pari-mutuel facilities to operate cardrooms (as such term is defined in the statute) if such facility meets the requirements set forth therein, including, but not limited to providing the Division of Pari-mutuel Wagering proof that "the local government where the applicant for such license desires to conduct cardroom gaming has voted to approve such activity by a majority vote of the governing body of the municipality ..." See Section 849.086(16), Florida Statutes.

WHEREAS, Section 849.086(13)(f), Florida Statutes, authorized the distribution to the City of one-quarter (1/4) of the moneys deposited into the Pari-Mutuel Wagering Trust Fund from the cardroom tax revenue paid by SFRA to the State of Florida.

WHEREAS, pursuant to Hialeah, Fla., Ordinance 08-176 (Jan. 6, 2009), the City Council approved a resolution approving a cardroom at Hialeah Race Track and, in order to obtain assurances that the City is receiving its share of the moneys deposited by SFRA into the Pari-Mutuel Wagering Trust Fund, SFRA has agreed to provide the City financial records related to the operation of the cardroom at Hialeah Race Track.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do and hereby mutually agree and bind

Section 1.     Auditing; Access to Books and Records.

(a)     The City shall have the right to audit the books, records, and accounts of SFRA directly relating to the calculation of "gross receipts," as such phrase is defined in Section 849.086(2)(i), Florida Statutes, from the cardroom operations at Hialeah Race Track ("Gross Receipts") upon reasonable notice, in a reasonable manner, at a reasonably mutually agreeable time and place within the City.

(b)     SFRA shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the calculation of Gross

Receipts. All books, records, and accounts of SFRA relating to Gross Receipts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon reasonable request to do so, SFRA shall make same available at no cost to the City in written form.

(c) SFRA shall preserve and make available at a location within the City, at reasonable times following receipt of written notice, for examination and audit by the City, all financial records, supporting documents, statistical records, and any other documents pertinent to the calculation of Gross Receipts for a minimum period of three (3) years after the creation of the record. If any audit has been initiated and audit findings have not been resolved at the end of the three (3) year retention period, the books, records, and accounts shall be retained until resolution of the audit findings.

(d) If SFRA underreports to the State of Florida the amount of its Gross Receipts such that SFRA deposits into the Pari-Mutuel Wagering Trust Fund an amount that is less than 95% of the amount that SFRA should have deposited in such fiscal year, SFRA shall pay to the Pari-Mutuel Wagering Trust Fund the amount owed and pay to the City an administrative fee of ten percent (10%) of any amount owed to the City from the Pari-Mutuel Wagering Trust Fund, plus interest in an amount of one percent (1%) per month or portion thereof until the amount owed has been paid. Any underpayment shall be paid by SFRA to the Pari-Mutuel Wagering Trust Fund and the City within ten (10) days of notice of the audit finding, including interest and the administrative fee if owed.

## Section 2. Notices.

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing and delivered by personal service or sent by telex, telecopy, telegram, United States Registered or Certified Mail, return receipt requested, postage prepaid, or by overnight express delivery, such as Federal Express, to the parties at the addresses and telecopy numbers listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

To the City:

City Mayor  
City of Hialeah  
501 Palm Avenue  
Hialeah, FL 33010

With a copy to:

City Attorney  
501 Palm Avenue  
Hialeah, FL 33010

To SFRA:

John J. Brunetti  
2200 East 4<sup>th</sup> Avenue  
Hialeah, Florida 33010

Any Party to this Agreement may change its notification address(es) by providing written notification to the remaining parties pursuant to the terms and conditions of this section.

Section 3. Exclusive Venue, Choice of Law, Specific Performance.

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in the County. In addition to any other legal rights, the City shall each have the right to specific performance of this Agreement in court.

Section 4 No Oral Change or Termination.

This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writ deposited into the Pari-Mutuel Wagering Trust Fund from the cardroom tax revenue paid and signed by the party against whom enforcement of the change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

Section 5 Representations; Reservations of Rights.

(a) Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms.

(b) The City hereby reserves all rights to impose an additional tax on the live racing or games conducted by SFRA at Hialeah Race Track as permitted pursuant to Section 550.105(9), Florida Statutes.

Section 6 Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, hereafter be determined to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

Section 7      Assignment and Transfer.

This Agreement shall be binding on SFRA and their heirs, successors and assigns. SFRA shall not assign this Agreement without the prior written consent of the City, which shall not be unreasonably withheld or denied, except that SFRA may assign this Agreement, without the consent of the City, to a purchaser of all or a portion of the Property.

Section 8      Cancellation and Enforcement.

Enforcement of this Agreement shall be by action against any parties or person violating, or attempting to violate, any covenants set forth in this Agreement. The prevailing party in any action or suit pertaining to or arising out of this Agreement shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his/her/its attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

**[Signature pages to follow]**

IN WITNESS WHEREOF, the City and SFRA have caused this Agreement to be duly executed.

CITY OF HIALEAH, FLORIDA, a political  
subdivision of the State of Florida

Attest:

By: \_\_\_\_\_  
Marbelys Fatjo  
Acting City Clerk

By: \_\_\_\_\_  
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
William M. Grodnick  
City Attorney

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SOUTH FLORIDA RACING  
ASSOCIATION, LLC

Witnesses (if partnership):

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

By: \_\_\_\_\_  
John J. Brunetti, Managing Member

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2009, by \_\_\_\_\_, as \_\_\_\_\_ for  
\_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Print, Type or Stamp Commissioned  
Name of Notary Public

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

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